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E-filing

UNITED STATES DISTRICT COURT
for the NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

EMC

CV Case 08

5180

JUANITA STOCKWELL, MICHAEL
LEWIS, TERRY IVY, VINCE NEESON,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED;
GUILLERMO L. AMIGO, E. R.
BALINTON, NIKOLAUS BORTHNE,
EDWARD BROWNE, PETER
BUSALACCHI, ROLANDO J. CANALES,
SILVIA DAVID, PHILIP FLECK, SEVERO
FLORES, GEORGE S. FOGARTY,
MALCOLM FONG, MARY GODFREY,
JASON HUI, SHEILA JACKSON,
JACKLYN M. JEHL, RICHARD JUE,
ROBERT LEUNG, PAUL LOZADA,
CHARLES E. LYONS, D.H. BUD
MASSEY, DIANE MCKEVITT, BRUCE
MEADORS, THOMAS O'CONNOR,
JUDITH RIGGLE, SUSAN ROLOVICH,
JEFFERY SUNG, LINDSEY SUSLOW,
RICARDO VALDEZ, JESSIE A.
WASHINGTON, MICHAEL WELLS, and
on behalf of all others similarly situated

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO; HEATHER FONG, CHIEF
SAN FRANCISCO POLICE
DEPARTMENT, sued in her official
capacity

Defendants.

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND DAMAGES FOR
VIOLATIONS OF THE AGE
DISCRIMINATION IN
EMPLOYMENT ACT AND THE
CALIFORNIA FAIR EMPLOYMENT
AND HOUSING ACT**

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Individual and Representative Plaintiffs JUANITA STOCKWELL, MICHAEL LEWIS,
2 TERRY IVY, VINCE NEESON (collectively "Plaintiffs") on behalf of themselves and all
3 others similarly situated, allege, upon personal knowledge as to themselves and upon information
4 and belief as to other matters, as follows:

5 **NATURE OF THE CLAIM**

6 1. Defendant City and County of San Francisco (hereinafter the "City" or "CCSF")
7 is a municipal entity that discriminates against police officers in the San Francisco Police
8 Department ("SFPD") with respect to promotions, compensation and other terms and conditions
9 of employment in violation of the Age Discrimination in Employment Act and the California
10 Fair Employment and Housing Act. Heather Fong, Chief of SFPD, is sued in her official
11 capacity.

12 2. The violations are systemic and continuing, based upon Police Department wide
13 policies and practices, and are the result of unchecked age bias that pervades the culture of the
14 Department. CCSF's policies and practices with regard to the distribution of promotional
15 opportunities under its control deny qualified older officers equal opportunities for promotion
16 and compensation.

17 3. As a result of the City's department-wide policies and practices, plaintiffs have
18 been denied promotion, despite their qualifications and experience, to the rank of Q-35 Inspector
19 and have earned substantially less than younger, less experienced officers. These promotional
20 and earnings disparities, which CCSF caused by reckless indifference and/or intentional conduct,
21 have existed every year throughout the liability period of this case and are part of a pattern or
22 practice of intentional discrimination.

23 4. The City has a long history of discrimination in its police department. A class
24 action in this Court in 1973 for race, sex and national origin bias, Officers for Justice vs. Civil
25 Service Commission of San Francisco, compelled systemic changes in the department's
26 promotional opportunities. The suit was settled in 1979 by consent decree, which remained in
27 effect until 1998. By a stipulation accompanying the dismissal of the consent decree, CCSF

28 CLASS ACTION COMPLAINT

1 agreed to give a test for the Q-35 Inspectors position and to promote officers to that position from
2 a list of those that had passed the test.

3 5. Starting in 2006, and throughout the liability period, CCSF has caused age-based
4 earnings disparities its Police Department by intentionally implementing a policy and practice to
5 promote younger, less qualified officers to the investigations bureau, passing over older officers.
6 Unlike those promoted, plaintiffs had passed qualifying examinations for the investigators bureau
7 and had many years of prior experience in investigations.

8 6. Through its Police Department, the City has intentionally implemented these
9 policies and practices and maintained its discriminatory compensation system in order to
10 promote and train younger officers at the expense of older, more qualified officers. CCSF's
11 policies and practices, even if facially neutral, have had and continue to have an adverse impact
12 on the promotional and compensation opportunities of older officers.

13 7. Accordingly, this class action is brought by older police officers on behalf of
14 themselves individually and all similarly-situated officers over 40 years old against whom CCSF
15 has discriminated on the basis of age. This action seeks to end CCSF's discriminatory policies
16 and practices and to make the Plaintiff class whole by requesting the following remedies:
17 injunctive and declaratory relief to remedy systemic age discrimination in CCSF's Police
18 Department; back pay, front pay and compensatory damages.

19 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

20 8. This Court has jurisdiction over the ADEA claims pursuant to 28 U.S.C. § 1331
21 and over the California FEHA claims under its supplemental jurisdiction 28 U.S.C 1367.

22 9. Venue is proper in this District pursuant to 28 U.S.C. § 1331 (b). Members of the
23 Plaintiff class reside in California and in this District. Defendant CCSF is wholly located in this
24 District. All of the acts complained of and giving rise to the claims alleged occurred and/or are
25 still occurring in this State and this District.

26 10. Assignment to the San Francisco Division of this Court is proper because some
27 Plaintiffs reside within the Division and because all of the acts complained of took place in San
28 Francisco.

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REPRESENTATIVE PLAINTIFFS

11. Plaintiff Juanita Stockwell is a female resident of San Francisco, California. She is 60 years old. Ms. Stockwell has been with SFPD for 28 years, has passed the test for Q-35 Inspector, and has extensive investigations experience such as responding to crime scenes, conducting suspect identifications, and collaborating with outside agencies on matters involving San Francisco gangs. During the course of her employment as an officer of the SFPD, by application of its department-wide policies and practices, SFPD denied Ms. Stockwell opportunities on the basis of her age that directly impacted her rank and compensation.

12. Plaintiff Michael Lewis is a male resident of Hercules, California. He is 59 years old. Mr. Lewis has worked as a San Francisco Police Officer since January 1978. Throughout his 30 years of service with SFPD Mr. Lewis performed extensive investigative work as a member of the Gang Task Force, investigating Black gang crime cases and working in conjunction with the Homicide Detail to investigate Black gang murders. Mr. Lewis was the first Black officer to be certified by the San Francisco Court as a Gang Expert. Mr. Lewis continued to perform and excel at investigative duties as a member of Tactical Investigations Unit. Despite Mr. Lewis's ample investigative experience and positive evaluations during the course of his employment as an officer, SFPD, by application of its department-wide policies and practices, denied Mr. Lewis opportunities on the basis of his age that directly impacted his rank and compensation.

13. Plaintiff Terrye Ivy is a female resident of San Mateo, California. She is 57 years old and worked with SFPD for 33 years. In 1999 Ms. Ivy applied for a promotion to Inspector and was placed on the ensuing eligibility list as a result of her 25 years experience with investigative work while working as a police officer. During the course of her employment as an officer of the SFPD, by application of its department-wide policies and practices, SFPD denied Ms. Ivy opportunities on the basis of her age that directly impacted her compensation.

14. Plaintiff Vince Neeson is a male resident of San Francisco, California. He is 56 years old. Mr. Neeson has worked as a SFPD Officer for 36 years, during which time he amassed extensive investigative experience as a member of the plainclothes investigative unit and the Narcotics Division, which is a part of the Bureau of Inspectors. Mr. Neeson attended the

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1 P.O.S.T certified Institute of Criminal Investigations and has received three Meritorious Conduct
 2 Awards expressly pertaining to his investigative work, as well as multiple medals of honor,
 3 Police Commission Commendations, and Captain Complimentary reports. Yet throughout his
 4 tenure as an officer, SFPD, by application of its department-wide policies and practices, denied
 5 Mr. Neeson opportunities on the basis of his age that directly impacted his rank and
 6 compensation.

7 **OTHER PLAINTIFFS**

8 15. Guillermo L. Amigo, E. R. Balinton, Nikolaus Borthne, Edward Browne, Peter
 9 Busalacchi, Rolando J. Canales, Silvia David, Philip Fleck, Severo Flores, George S. Fogarty,
 10 Malcolm Fong, Mary Godfrey, Jason Hui, Sheila Jackson, Jacklyn M. Jehl, Richard Jue, Robert
 11 Leung, Paul Lozada, Charles E. Lyons, D.H. Bud Massey, Diane McKevitt, Bruce Meadors,
 12 Thomas O'Connor, Judith Riggle, Susan Rolovich, Jeffery Sung, Lindsey Suslow, Ricardo
 13 Valdez, Jessie A. Washington, Michael Wells are all police officers over age 40 with extensive
 14 experience and qualifications gained throughout their long term employment with SFPD.

15 16. All of the plaintiffs took and passed the test for Q-35 Inspector and were
 16 subsequently put on the eligibility list. SFPD passed over all of the plaintiffs in favor of younger,
 17 less qualified individuals in promotions to the Investigations Bureau.

18 **CLASS ALLEGATIONS**

19 17. Plaintiffs bring this Class Action pursuant to F.R.C.P. 23(a), (b)(2), and (b)(3) on
 20 behalf of a Class of police officers age 40 and older who were employed by CCSF at any time
 21 since October 18, 2006. Plaintiffs and members of the Class they seek to represent were, on the
 22 basis of their age, denied promotional opportunities that adversely impacted their rank and
 23 compensation.

24 18. The members of the Class identified herein are so numerous that joinder of all
 25 members is impracticable. Although the precise number of SFPD officers age 40 or older is
 26 currently unknown, it is far greater than can be feasibly addressed through joinder.

27 19. There are questions of law and fact common to the Class, and these questions
 28 predominate over any questions affecting only individual members. Common questions include,

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1 among others: (1) whether SFPD's policies or practices discriminate against older officers; (2)
 2 whether SFPD's Human Resources Department has failed to implement policies and practices to
 3 prevent discrimination against older employees; (3) whether SFPD's policies and practices
 4 violate ADEA and/or the California Fair Employment and Housing Act; and (4) whether
 5 equitable remedies, injunctive relief and damages for the Class members are warranted.

6 20. The Representative Plaintiffs' claims are typical of the claims of the Class and
 7 they will fairly and adequately represent and protect the interests of the members of the Class.
 8 Plaintiffs have retained counsel competent and experienced in complex class actions and in
 9 employment discrimination litigation.

10 21. Class certification is appropriate pursuant to F.R.C.P. 23(b)(2) because the City
 11 has acted and/or refused to act on grounds generally applicable to the class, making appropriate
 12 declaratory and injunctive relief with respect to Plaintiffs and the Class as a whole. The Class
 13 members are entitled to injunctive relief to end CCSF's unfair and discriminatory policies and
 14 practices. SFPD has computerized account data, payroll and personnel data that will facilitate
 15 calculation of damages for specific Class members.

16 **FIRST CLAIM FOR RELIEF**

17 **(Age Discrimination in Employment Act 42 U.S.C § 64 *et seq.*)**

18 Plaintiffs incorporate the preceding paragraphs as alleged above.

19 22. The City has engaged in an intentional and continuing police department-wide
 20 pattern or practice of discrimination against older officers. The discriminatory acts that
 21 constitute SFPD's continuing pattern or practice of discrimination occurred both within and
 22 outside the liability period in this case.

23 23. SFPD has intentionally maintained a system that locks in, maintains, perpetuates
 24 and increases discrimination against older police officers by continually implementing
 25 department-wide policies and practices that ignore qualifications and experience and that are
 26 discriminatory, subjective, and/or arbitrary. SFPD's discriminatory policies or practices
 27 described above have denied older police officers opportunities and compensation, in the loss of
 28 past and future wages and other job benefits, as compared to less qualified younger officers.

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1 24. This system, and these policies and practices, have had an adverse impact on older
2 police officers and are not, and cannot be, justified by business necessity. Even if such system
3 could be justified by business necessity, less discriminatory alternatives exist and would equally
4 serve any alleged necessity.

5 25. Defendant has intentionally discriminated against Plaintiffs and the Class by
6 maintaining a continuing pattern or practice of denying opportunities that directly affect rank and
7 compensation to qualified and experienced officers on the basis of age. The foregoing conduct
8 constitutes illegal, intentional discrimination and unjustified disparate treatment prohibited by 42
9 U.S.C. § 64 *et seq.*

10 26. Plaintiffs have timely filed charges with the EEOC making classwide claims of
11 discrimination as well as individual claims and have exhausted their administrative remedies.

12 **SECOND CLAIM FOR RELIEF**

13 **(Age Discrimination in Violation of California Fair Employment and Housing Act,** 14 **Cal. Gov't Code § 12940 *et seq.*)**

15 Plaintiffs incorporate the preceding paragraphs as alleged above.

16 27. As described above, the City's actions constitute age discrimination in violation of
17 the California Fair Employment and Housing Act (FEHA). The City's age discrimination during
18 the FEHA liability period is part of a continuing violation that began before the liability period.
19 Plaintiffs have received Right to Sue letters from the DFEH. The pendency of EEOC
20 investigations into Plaintiffs' charges tolled the time limit for filing civil actions pursuant to the
21 Fair Employment and Housing Act. Plaintiffs have timely complied with all prerequisites to suit
22 and have exhausted their administrative remedies.

23 **ALLEGATIONS REGARDING RELIEF**

24 Plaintiffs incorporate the preceding paragraphs as alleged above.

25 28. An actual and justiciable controversy exists regarding as to whether the City's
26 hiring practices have a disparate impact on or constitute disparate treatment of SFPD officers age
27 40 and over. Plaintiffs contend that the City has denied them promotional opportunities that have
28 an adverse impact on their rank and compensation on the basis of age. Defendant denies the

CLASS ACTION COMPLAINT

1 discriminatory nature of its hiring practices. Plaintiffs request the Court to declare that the City's
 2 hiring practices are invalid and unlawful and that it permanently enjoin the implementation of
 3 them.

4 29. Plaintiffs and the Class they seek to represent have no plain, adequate, or
 5 complete remedy at law to redress the wrongs alleged herein; so the injunctive relief sought in
 6 this action is an appropriate means of securing complete and adequate relief. Plaintiffs and the
 7 Class they seek to represent are now suffering, and will continue to suffer, irreparable injury from
 8 Defendant's discriminatory acts and omissions.

9 30. The City's actions have caused and continue to cause Plaintiffs and all Class
 10 members substantial losses in earnings and other employment benefits in an amount according to
 11 proof.

12 31. Representative Plaintiffs and the Class have suffered and continue to suffer
 13 humiliation, embarrassment, anguish and distress, all to their damage in an amount according to
 14 proof.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs and the Class pray for relief as follows

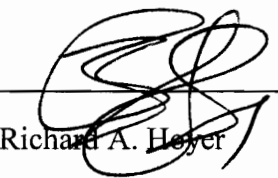
- 17 1. Certification of a class action on behalf of the proposed Class.
- 18 2. Designation of Representative Plaintiffs Terrye Ivy, Michael Lewis, Vincent
 19 Neeson, and Juanita Stockwell as representatives of the Class;
- 20 3. Designation of Representative Plaintiffs' counsel of record as Class counsel;
- 21 4. A declaratory judgment that the practices complained of herein are unlawful and
 22 violate 42 U.S.C. § 64 *et seq.*, the California FEHA, Cal. Gov't Code §§ 12940, *et seq.*;
- 23 5. A preliminary and permanent injunction against CCSF and its officers, agents,
 24 successors, employees, representatives, and any and all persons acting in concert with them, from
 25 engaging in each of the unlawful policies, practices, customs, and usages set forth herein;
- 26 6. An order that CCSF institute and carry out policies, practices, and programs that
 27 provide equal employment opportunities for all employees regardless of age, and that it eradicate
 28 the effects of its past and present unlawful employment practices;


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- 1 7. Back pay (including interest and benefits) for individual Plaintiffs and Class
- 2 members;
- 3 8. All damages sustained as a result of the City's conduct, including damages for
- 4 emotional distress, humiliation, embarrassment, and anguish, according to proof;
- 5 9. Costs incurred herein, including reasonable attorneys' fees to the extent allowable
- 6 by law;
- 7 10. Pre-judgment and post-judgment interest, as provided by law; and
- 8 11. Such other and further legal and equitable relief as this Court deems necessary,
- 9 just, and proper.

10 Dated: November 17, 2008

11 Respectfully submitted,

12 
13 _____
14 Richard A. Hoyer

15 
16 _____
17 Michael S. Sorgen

18 Attorneys for Plaintiffs

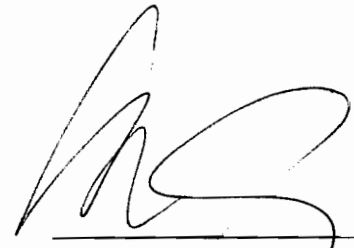
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues so triable.

Dated: November 17, 2008

Respectfully submitted,



Richard A. Hoyer

Michael S. Sorgen

Attorneys for Plaintiffs